IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8045 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHETAN SHITALDAS VASVANI (SINDHI)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT, Ld. AGP for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ

petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 4th July, 2000 (Annexure - A) passed by respondent No.2 with respect to detenu - Chetan Shitaldas Vasvani (Sindhi) in exercise of his powers conferred upon him under section 3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is "a bootlegger" within the meaning of section 2(b) of the Act, and that activities of the petitioner are prejudicial to the maintenance of the public health.

3. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on two Cases lodged against the petitioner-detenu in Vadodara City Police Station. Out of said two cases, one case is lodged against the petitioner-detenu for offences punishable under the Indian Penal Code, while another case is lodged against the petitioner detenu for offences punishable under the Bombay Prohibition Act, 1949. The detaining authority has also placed reliance on statements of three anonymous witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. As per the papers, that statements were verified by the detaining authority on 20th March, 2000 and the order of detention dated 4th July, 2000 came to be passed against the detenu which is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondent has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.H. R. Prajapati, learned advocate for the petitioner has argued that the detaining authority has placed reliance on two cases, one case is for offences punishable under the Indian Penal Code and other is lodged for offences punishable under the Bombay Prohibition Act. Mr.Prajapati, learned advocate for the petitioner has argued that statements of two anonymous witnesses were verified on 20th March, 2000 and the order of detention has been passed after about four months and thus, there is a delay of four months. Merely, because there is a delay order cannot be quashed and set aside. The detaining authority ought to have explained the delay for passing an order of detention and this unexplained

delay has vitiated an order of detention. Mr.Prajapati, learned advocate for the petitioner has cited an authority of ELESH NANDUBHAI PATEL Vs. COMMISSIONER OF POLICE AND OTHERS 1997 (2) GLR 381, wherein it has been held that unexplained delay makes a ground of detention not proximate vitiating the order of detention itself. In view of this, the order which is challenged in this writ petition is also vitiated by unexplained delay and, therefore, this case squearly falls within the four corners of aforesaid case cited by the learned advocate for the petitioner.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 4th July, 2000 passed by respondent No.2 with respect to detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)

(vrp)*